

RAYMOND E. PATCHEN  
v.  
PORTLAND AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS

IBIA 91-76-A

Decided August 27, 1991

Appeal from a denial of an application for a U.S. direct loan.

Affirmed.

1. Indians: Financial Matters: Financial Assistance

Under 25 U.S.C. § 1463 (1988), loans from the Indian Revolving Loan Fund may be made only to applicants who in the opinion of the Secretary are unable to obtain financing from other sources on reasonable terms and conditions.

2. Administrative Procedure: Burden of Proof--Bureau of Indian Affairs: Administrative Appeals: Discretionary Decisions--Indians: Financial Matters: Financial Assistance

When a challenge is raised to a discretionary decision issued by a Bureau of Indian Affairs official under 25 CFR Chapter I, the appellant bears the burden of showing that the official did not properly exercise discretion.

APPEARANCES: Raymond E. Patchen, pro se.

OPINION BY ADMINISTRATIVE JUDGE VOGT

Appellant Raymond E. Patchen seeks review of a March 15, 1991, decision of the Portland Area Director, Bureau of Indian Affairs (Area Director; BIA), denying an application for a U.S. direct loan. For the reasons discussed below, the Board affirms the Area Director's decision.

Background

Appellant, a member of the Pit River Indian Tribe of California, purchased a mobile home in December 1990 and secured financing in the amount

of \$38,077.50 through Security Pacific Housing Services, Inc., Vancouver, Washington. He then applied to the Portland Area Office of BIA for a U.S. direct loan in the entire amount of his original loan. Appellant's application gave as the purpose of the requested loan: "Refinance our immediate home loan because the BIA interest is much lower and this would be more economical for us."

On March 15, 1991, the Area Director denied appellant's application, stating:

The purpose of the U.S. Direct Loan program is to provide a means of funding for tribes or individuals who are unable to obtain financing on reasonable terms and conditions from other sources.

In review of your loan with Security Pacific Bank the financing is on reasonable terms and conditions in relation to other lenders' policies on mobile home loans.

One of the criteria under this program is that when there appears to be a reasonable probability that an applicant can secure financing from other sources, the Bureau requires the applicant to furnish two letters from customary lenders in the area stating if they will make the loan or not. In this case you have already secured a loan for your mobile home.

Funds are very limited in this Bureau program and there is a large demand for these funds from tribes and individuals who are unable to secure assistance from any other source than the United States Direct Loan Program.

Appellant's notice of appeal from this decision was received by the Board on April 8, 1991. Appellant filed a statement of reasons with his notice of appeal. The Area Director filed a response to appellant's statement.

#### Discussion and Conclusions

On appeal to the Board, appellant again indicates that he seeks a loan from BIA in order to reduce the interest rate he pays on his existing loan. He states: "I can't see why the Bureau of Indian Affairs won't honor my request to refinance this house, since I can make their payments in good faith and will be financially able to. The difference between the monthly payments and interest rates aren't even close" (Statement of Reasons at 4).

[1] Loans to Indians from the Indian Revolving Loan Fund are made under Title I of the Indian Financing Act, 25 U.S.C. § 1461-1469 (1988).

25 U.S.C. § 1463 (1988) provides: "Loans may be made \* \* \* only to applicants who in the opinion of the Secretary are unable to obtain financing from other sources on reasonable terms and conditions."

25 CFR 101.3(c) provides:

If local lending conditions and/or the information in an application for a loan indicate a probability that an applicant may be able to obtain the loan from other sources, the Commissioner [of Indian Affairs], before approving a United States direct loan, will require the applicant to furnish letters from two customary lenders in the area who are making loans for similar purposes, stating whether or not they are willing to make a loan to the applicant for the same purposes and amount. If a customary lender will make the loan on reasonable terms and conditions, the Commissioner will not approve a United States direct loan.

In this case the Area Director concluded that, because appellant had just been approved for a loan, on terms which the Area Director found reasonable, appellant was not an applicant who was "unable to obtain financing from other sources on reasonable terms and conditions." This clearly appears to be a reasonable conclusion under the circumstances. <sup>1/</sup>

In Power Fuel Producers, Inc. v. Acting Anadarko Area Director, 20 IBIA 190, 191 (1991), the Board stated:

The Board's decisions in appeals from loan denials establish that (1) BIA's decision to approve or deny a loan is discretionary; (2) the Board will not substitute its judgment for BIA's; (3) the Board's role in such cases is to ensure that BIA gave consideration to all legal prerequisites to the exercise of discretion; and (4) where there is no procedural error, and the decision and/or administrative record show how BIA reached its conclusions, the BIA decision will be affirmed. See, e.g., Parisian v. Acting Billings Area Director, 19 IBIA 109 (1990); S & H Concrete Construction v. Acting Phoenix Area Director, 19 IBIA 69 (1990); Gauthier v. Portland Area Director, 13 IBIA 303 (1990).

[2] Further, the Board stated, an appellant bears the burden of proving that BIA's discretion was not properly exercised. Id. Appellant's desire for a lower interest rate, although understandable, is

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<sup>1/</sup> The Area Director states that BIA will consider refinancing a loan where the applicant is unable to meet the obligations of his existing loan and is in danger of losing his home or business; he notes, however, that appellant is not in that situation (Area Director's Response at 1).

Appellant does not contend that he is unable to make the payments on his existing loan.

insufficient to carry his burden of proving that the Area Director did not properly exercise his discretion.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Area Director's March 15, 1991, decision is affirmed.

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Anita Vogt  
Administrative Judge

I concur:

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Kathryn A. Lynn  
Chief Administrative Judge